

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court -I)  
KOLKATA**

**IA(IBC)/1053(KB)2022  
in  
CP(IB)/07(KB)2018**

*Under section 33 of the Insolvency & Bankruptcy Code, 2016*

*In the matter of:*

Exclusive Engineers Private Limited  
(CIN: U74210WB1981PTC033555)

.... Corporate Applicant

*And*

*In the matter of:*

Mr. Manoj Kulshrestha,  
Resolution Professional of Exclusive Engineers Private Limited

... Applicant

**Order pronounced on: 08/11/2023**

*Coram:*

**Shri Rohit Kapoor** : **Member (Judicial)**

**Shri Balraj Joshi** : **Member (Technical)**

*Appearances (through hybrid mode):*

For RP : Mr. Rishav Banerjee, Adv.  
Mr. Soumava Mukherjee, Adv.

**ORDER**

***Per: Balraj Joshi, Member (Technical)***

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)/1053(KB)2022** is an application filed under section 33 of the Insolvency and Bankruptcy Code, 2016 (in short “**IBC**”) by the Resolution Professional (“**RP**”) of **Exclusive Engineers Private Limited**, the Corporate Applicant (Corporate Debtor), praying for the following reliefs: -

- (a) *Pass an order for initiation of liquidation proceeding of M/s. Exclusive Engineers Private Limited under Section 33 of the Insolvency and Bankruptcy Code, 2016;*
- (b) *Appoint some other Insolvency Professional on the panel to act as Liquidator;*
- (c) *Direct the Directors of Corporate Debtor and Committee of Creditors to pay the Applicant Rs.17,36,566 (Seventeen Lakhs Thirty-Six Thousand Five Hundred Dixty only) which incurred by the Applicant for CIRP expenses;*
- (d) *Pass such further and other orders and directions as the nature and circumstances of the case may require and as this Hon'ble Tribunal may deem fit and proper.*

This application is supported by an affidavit<sup>1</sup> duly affirmed by Mr. Manoj Kulshrestha, the RP.

3. This Adjudicating authority, on a petition filed u/s. 10 of the IBC read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Exclusive Engineers Private Limited, the Corporate Applicant, *vide* order dated 21/11/2019 in CP(IB)/07(KB)2018, had ordered initiation of CIRP against the Corporate Applicant. Mr. Manoj Kulshrestha was appointed as the Interim Resolution Professional (“**IRP**”).
4. In terms of section 15 of the IBC, Public Announcements<sup>2</sup> in **Form A** was published in “*Financial Express*” (English) and “*Ek Din*” (Bengali) on 26/11/2019 inviting claims from the creditors.
5. In terms of section 21 of the IBC Committee of Creditors<sup>3</sup> (in short “**CoC**”) was duly formed with the following two Operational Creditors:
  - (i) Union of India – Navy – 99.05%
  - (ii) The Commissioner of Commercial Tax, Government of West Bengal – 0.95%.

6. It is stated in the application that two applications one u/s. 19(2) of the IBC and

<sup>1</sup> At pages 16 and 18 of the application

<sup>2</sup> Averments in paragraph 4.3 at page 10 of the application

<sup>3</sup> Averments in paragraph 4.4 at page 10 of the application

the other under rule 11 of the NCLT Rules were filed being IA(IBC)/204(KB)2020 and IA(IBC)/205(KB)2020, which were *dismissed with liberty to file a fresh copy of the application in accordance with law*<sup>4</sup> vide order dated 11/05/2022

7. 1<sup>st</sup> meeting of the CoC was held on 23/11/2020 at M.K.Associates, 4F, CS-14, Ansal Plaza, Vaishali, Ghaziabad, Uttar Pradesh and a copy of the minutes of the 1<sup>st</sup> CoC meeting forms **Annexure B**<sup>5</sup> to the application.
8. It is stated in the application that due to suspension of AFA of the applicant, the applicant could not take any steps at that time. However, CoC did not take any steps to file the requisite application for replacement of IRP/RP in accordance with section 27 of the IBC, 2016<sup>6</sup>.
9. It is submitted by the Ld. Counsel for the RP that the maximum permissible limit of 330 days of the CIRP period has expired long back. Under the circumstances and especially in the light of the fact that there are no assets of the Corporate Debtor, non-cooperation from the Corporate Applicant and no funds have been provided even by the CoC members for CIRP cost, it is clear that there is no scope for resolution and consequently the Corporate Applicant ought to be liquidated as per operation of law.
10. It is also submitted by the Ld. Counsel for the RP that necessary direction be passed directing the Directors of the Corporate Debtor / CoC for making payments of CIRP costs and expenses incurred by the IRP/RP in the matter to the tune of Rs.17,36,566/- in accordance with the minutes of the meeting of the CoC, details of which are given in **Annexure ‘E’**<sup>7</sup> to the application.
11. Mr. Manoj Kulshrestha, Resolution Professional has not given his consent to act as the Liquidator of the Corporate Debtor. It is pertinent to note that the 330 days

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<sup>4</sup> Annexure C at pagt 30 of the application

<sup>5</sup> At pages 21 to 29 of the application

<sup>6</sup> Averments in paragraph 4.8 at page 13 of the application

<sup>7</sup> At page 32 of the application

CIRP period has elapsed by efflux of time.

12. We have heard the Ld. Counsel for the RP, perused the application and the documents attached therewith.

13. Section 33(1)(a) of the Code mandates that the Adjudicating Authority shall pass an order of liquidation where no resolution plan is received before the expiry of the CIRP. Sub-section (2) thereof requires the Adjudicating Authority to pass the liquidation order where the Resolution Professional intimates to the Adjudicating Authority the decision of the Committee of Creditors approved by not less than 66% of the voting share to liquidate the Corporate Debtor.

14. (i) Section 54 of the Code reads as follows: -

*“54(1) Where the assets of the Corporate Debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.*

*(2) The Adjudicating Authority shall on application filed by the liquidator under sub-section (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.*

*(3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.”*

(ii) Rule 14 of the IBBI (Liquidation Process) Regulations, 2016 reads as follows: -

*“Rule 14. **Early dissolution** - Any time after the preparation of the Preliminary Report, if it appears to the liquidator that –*

*(a) The realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and*

*(b) The affairs of the corporate debtor do not require any further investigation; he may apply to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution”.*

- (iii) Rule 11 of the NCLT Rules, 2016 confers inherent powers on NCLT, which reads as follows: -

*“Rule 11 : Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”*

- (iv) Section 12 of the Code stipulates time-limit for completion of insolvency resolution process, which reads as follows: -

*“12(1) Subject to sub-section (2) the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.*

*(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five per cent of the voting shares;*

*(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days.*

***Provided** that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.”*

15. Upon a conjoint reading of the above provisions, the ultimate objective of the Code is either to resolve the issue by way of approval of Resolution Plan or to liquidate and then to dissolve the Corporate Debtor, as expeditiously as possible. Since the Corporate Debtor does not prima facie own any valuable asset whose value is capable of maximization and have entirely eroded its capital and has neither any assets nor any cooperation from the suspended members of the Board of Directors of the Corporate Debtor, even no funds have been provided by the CoC members to meet IRP/RP fees and CIRP cost and that the Corporate Debtor

was not a going concern, no useful purpose would be served by resorting to the rigour of liquidation as the CoC has not even paid the CIRP cost and as submitted by the RP is not at all interested in bearing the liquidation cost as well.

16. Since the Corporate Debtor does not have any assets, as stated at page 13 of the IA, no useful purpose would be served by instituting liquidation process as required under section 33 of the code. It is submitted by the Ld. Counsel for the RP that the CoC, which comprises of the Union of India – Navy (99.05%) and the Commissioner of Commercial Tax, Government of West Bengal (0.95%), is not interested in spending more money and hence the hesitation in taking any decisions in the meetings and providing direction to the RP. From the submissions of the Ld. Counsel for the RP, it is clear that it would be judicious to resort to direct dissolution of the Corporate Debtor rather than first sending it to liquidation fruitlessly and then attempting to liquidate non-existent assets and then dissolving the Corporate Debtor, particularly when it is clear that even the fees of the RP and the CIRP cost have not been paid by the CoC. In view of the “nil” assets it is presumed that the assets have been liquidated.
17. In view of the above facts and circumstances, it is prudent to **dissolve the Corporate Debtor, and it is ordered accordingly**. However, personal liability/Guarantee of any Directors/Promoters of the Corporate Debtor, if any, would not absolve them of their liability by virtue of this order. Aggrieved party/parties, if any, shall be at liberty to continue or to take appropriate legal remedies against them.
18. The CoC is directed to pay the IRP/RP fees and CIRP cost as approved by them at the CoC meeting held on 23/11/2020.
19. The Resolution Professional is further directed to serve a copy of this order upon the Registrar of Companies, West Bengal, immediately and, in any case, within fourteen days of receipt of this order. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.

20. The Resolution Professional shall stand discharged from his responsibilities, subject to procedural compliances.
21. ***IA(IBC)/1053(KB)2022*** in ***CP(IB)/07(KB)2018*** is allowed with the above directions and the ***IA(IBC)/1053(KB)2022*** and ***CP(IB)/07(KB)2018*** are hereby **disposed of** accordingly.
22. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
23. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
24. File be consigned to records.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

Signed on this, the 8<sup>th</sup> day of November, 2023.

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